

Message Text

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ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

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TAGS: EAIR, BEXP, BR

SUBJECT: CIVAIR: TIA REQUEST FUEL TAX EXEMPTION

REF: A) STATE 041893; B) STATE 059800; C) TELEX OF
APRIL 17, 1975, FROM CLAYTON BURWELL OF TIA

1. SUMMARY: CONGEN OFFICERS HAVE DISCUSSED TIA REQUEST FOR TAX EXEMPTION WITH OFFICIALS OF DAC, CERNAI, EMBRATUR, AND LOCAL LEGAL FIRM REPRESENTING TIA. LEGAL REPRESENTATIVE OF TIA HAS ALSO DISCUSSED ISSUE WITH PERTINENT BRAZILIAN AGENCIES. GOB FULLY AWARE OF QUESTION. CERNAI, WHICH CURRENTLY IS CENTER OF GOB REVIEW OF ISSUE, HAS PROMISED TO GIVE ITS OPINION AS SOON AS POSSIBLE. EVEN IF BOG RENDERS FAVORABLE DECISION, IMPLEMENTATION OF TAX EXEMPTION LIKELY TO TAKE SEVERAL MONTHS. END SUMMARY.

2. CONGEN OFFICERS HAVE DISCUSSED TIA REQUEST FOR TAX EXEMPTION WITH OFFICIAL SOF DAC, CERNAI, EMBRATUR AND LOCAL LAW FIRM REPRESENTING TIA. BRIGADEIRO VASCONCELOS OF DAC STATED THAT HIS AGENCY WOULD NOT OPPOSE TAX EXEMPTION, BUT BRAZILIAN LEGISLATION WOULD HAVE TO BE ALTERED IN ORDER TO PERMIT EXEMPTION. INITIATIVE FOR SUCH A CHANGE, HE SAID, SHOULD COME FROM THE BRAZILIAN
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TOURIST OFFICE (EMBRATUR), WHICH WOULD HAVE TO CONVINC

THE INTER-MINISTERIAL COUNCIL THAT THE TAX EXEMPTION IS DESIREABLE. IF AND WHEN IT IS CONVINCED, THE INTER-MINISTERIAL COUNCIL WOULD THEN REQUEST THE MINISTRY OF FINANCE TO INITIATE THE NECESSARY LEGAL CHANGE.

3. ON MARCH 19, 1975, CONGEN RIO OFFICERS VISITED EMBRATUR TO PRESENT CASE FOR TIA. EMBRATUR OFFICIAL, WHO STATED THAT HE HAD NO PRIOR KNOWLEDGE OF THE SITUATION, RECEIVED VISIT WITHOUT COMMENT. (TIA'S BRAZILIAN LAWYER CLAIMS THAT HE HAD PREVIOUSLY VISITED THE SAME EMBRATUR OFFICIAL ON TWO PREVIOUS OCCASIONS TO DISCUSS THIS ISSUE.) CONGEN RIO SUBSEQUENTLY FORWARDED, AS EMBRATUR OFFICIAL HAD REQUESTED, LETTER TO THE NEW PRESIDENT OF EMBRATUR EXPLAINING THE PROBLEM.

4. ON APRIL 22, 1975, CONGEN OFFICIERS CALLED ON CERNAI (BRAZILIAN INTERNATIONAL AVIATION AGENCY) TO DISCUSS TIA TAX ISSUE. CERNAI OFFICIALS ADMITTED THAT THEY ARE CURRENTLY CONSIDERING ISSUE, BUT HAVE REACHED NO CONCLUSION. THEY INDICATED, HOWEVER, THAT THEY BELIEVE BRAZIL IS GRANTING RECIPROCITY IN THAT IT ALLOWS FUEL TAX EXEMPTION FOR SCHEDULED CARRIERS OPERATING CHARTER FLIGHTS. THEY AFFIRMED, NEVERTHELESS, THAT THEY ARE STILL STUDYING THE ISSUE. (CERNAI UNDOUBTEDLY AWARE THAT 1954 DEPARTMENT OF COMMERCE DECISION, I.E., THAT SUBSTANTIAL RECIPROCITY EXISTED, WAS BASED ON 1953 BRAZILIAN DECREE LAW. BRAZILIAN LAW HAS NOT CHANGED SINCE THAT TIME). CONGEN OFFICERS URGED SPEEDY RESOLUTION OF QUESTION IN ORDER TO AVOID ITS BECOMING A MAJOR ISSUE OF CONTENTION.

5. CONGEN OFFICERS HAVE DISCUSSED ENTIRE SITUATION WITH TIA LAWYER IN RIO. LATTER NOTED THAT HE HAS PERSONALLY CONTRACTED EMBRATUR AND HAS FILED, THROUGH EMBRATUR, FORMAL APPLICATION FOR TAX EXEMPTION WITH THE INTER-MINISTERIAL COUNCIL ON TOURISM. THIS APPLICATION HAS NOT BEEN ANSWERED. IN ADDITION, HE HAS CONTACTED BOTH DAC AND CERNAI. TIA'S LAWYER BELIEVES THAT GOB, IF IT DOES DECIDE TO GRANT TAX EXEMPTION, WOULD REQUIRE LIMITED OFFICIAL USE

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SEVERAL MONTHS TO MAKE NECESSARY LEGAL CHANGES. CONGEN CONCURS IN THIS ASSESSMENT.

6. DURING FEBRUARY 1975 TRIP TO BRAZIL, TIA REPRESENTATIVE CITTADINI DID NOT RAISE ISSUE OF FUEL TAX EXEMPTION WITH DAC. RATHER, HE CONCENTRATED ON OBTAINING AUTHORIZATION FOR CURRENT SERIES OF CHARTER FLIGHTS AND REPORTEDLY SPOKE TO VARIG ABOUT A "CHARTER

POOLING" ARRANGEMENT.

7. COMMENT: THE SUGGESTION THAT CONGEN RIO DISCUSS TAX EXEMPTION WITH GOB IN TERMS OF RETALIATORY ACTION WOULD VERY LIKELY BE CONTER PRODUCTIVE FOR FOLLOWING REASONS:

A) MAJORITY OF CHARTER FLIGHTS ARE ON AMERICAN, NOT BRAZILIAN, FLAG CARRIERS. GOB MAY FEEL THAT MUTUAL ELIMINATION OF TAX EXEMPTION WOULD HURT US FLAG LINES MORE THAN BRAZILIAN LINE.

B) BRAZILIAN CIVIL AVIATION AUTHORITIES HAVE BEEN CONCERNED BY GROWING NUMBER OF CHARTER FLIGHTS AND THEIR ALLEGED DAMAGE TO SCHEDULED FLIGHTS. IF PRESSED ON TAX ISSUE, GOB MAY DECIDE SIMPLY TO REDUCE NUMBER OF CHARTER FLIGHT AUTHORIZATION, AND EXPECIALLY FOR TIA.

8. GOB IS WELL AWARE OF TIA REQUEST AND, FOLLOWING ITS NORMAL PROCEDURES, IS CONSIDERING THE ISSUE AS WELL AS ITS RAMIFICATIONS. IT IS UNLIKELY TO TAKE A DECISION UNTIL IT HAS RESOLVED ITS OWN ATTITUDE TOWARD CHARTERS AND HAS DECIDED WHAT ARE BRAZIL'S REAL INTERESTS IN THIS MATTER. IT APPEARS UNLIKELY, THEREFORE, THAT EVEN A POSITIVE DECISION COULD BE IMPLEMENTED IN LESS THAN THREE TO FOUR MONTHS.
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